

**REMARKS**

The indication of allowable subject matter in claims 2, 3, 7, 12, 13, 16-18 and 20, as well as the Examiner's detailed and clear Office Action, is acknowledged and appreciated. In view of the following remarks, it is respectfully submitted that all claims are in condition for allowance.

Claims 4-6 and 9 stand rejected under 35 U.S.C. § 112, second paragraph. This rejection is respectfully traversed for the following reasons. With respect to claim 4, the Examiner apparently alleges that the "first predetermined value" lacks sufficient antecedent basis. However, it is submitted that claim 2, on which claim 4 indirectly depends, defines "a first predetermined value" which is subsequently referenced in claim 4 as "the first predetermined value." With respect to claims 5, 6 and 9, the references to "third", "fourth" and "fifth", respectively, have been deleted to obviate this objection while emphasizing the independence of the various claim sets which do not depend on each other. Based on the foregoing, it is submitted that claims 4-6 and 9 are definite. Accordingly, it is respectfully requested that this rejection be withdrawn.

Claims 1, 8, 9, 11, 19, 21 and 22 stand rejected under 35 U.S.C. § 102 as being anticipated by Pardikes '937 ("Pardikes"), and claims 1, 8, 9, 11, 14, 15, 19, 21 and 22 stand rejected under 35 U.S.C. § 102 as being anticipated by Laguana et al. '698 ("Laguana"). These rejections are respectfully traversed for the following reasons.

As a preliminary matter, it is respectfully submitted that the Examiner has simply identified *general* disclosure of the cited prior art without identifying how the cited prior art meets the *specific* limitations recited in the pending claims. That is, the Examiner has merely cut portions of the cited prior art (e.g., Abstract, Detailed Description, Claims, etc.) and pasted them onto the Office Action, effectively quoting the prior art verbatim without explanation as to the alleged relevance to the pending claims.

In imposing a rejection under 35 U.S.C. §102, the Examiner is required to point to "page and line" wherein an applied reference is perceived to identically disclose each feature of a claimed invention. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984). In the instant case, it is respectfully submitted that the Examiner has failed to point to *any* specific "page and line" of the cited prior art, let alone explain how the "page and line" is perceived to identically disclose *each* feature of the claimed invention.

Nonetheless, it is respectfully submitted that neither Pardikes nor Laguana disclose or suggest the claimed invention. Each of claims 1, 8 and 19 recites in pertinent part, "verifying that a predetermined **amount** of said **sample solution** is held in said sample cell based on a change over time in an output signal from said photosensor." In contrast, both Pardikes and Laguana are directed to measuring the **concentration** of a **given component** of the combined solution (*see, e.g.*, col. 8, lines 60-62 of Pardikes; and col. 2, lines 54-56 of Laguana). For example, in Pardikes, the measured light intensity can be used to determine the concentration of the polymer component of the combined polymer/water solution. As would be understood in the art, the polymer component *itself* is NOT a sample solution, and the measurement thereof does not divulge the amount of the sample solution. Rather, the polymer is only one component of the combined polymer/water solution.

Moreover, even assuming *arguendo* that an individual component of a solution can be interpreted as a solution, the measured concentration of that component does not determine the amount of that component. That is, the concentration of an individual component in a given solution is simply an indication of the ratio of that component to the amount of the *total* solution. For example, with respect to Pardikes, the *amount* of polymer can be determined only with knowledge of the amount of the **combined solution of water and polymer**. Both Pardikes and

Laguana are silent as to determining the amount of the combined solution and are concerned only with a concentration of a given component of the combined solution. Accordingly, neither Pardikes nor Laguana suggest determining the “amount” of a given component of the solution.

In addition, it is further submitted that neither Pardikes nor Laguana appear to disclose determining the concentrations based on a *change over time* in an output signal from the photosensor. Again, the verification of the present invention occurs based on the *change over time* in an output signal, whereas the concentration measurements of Pardikes and Laguana appear to be based on discrete measurements of light intensity. It is not disputed that there may exist some relatively short period of time over which the measured light intensity changes within the discrete measurement. However, neither Pardikes nor Laguana suggest a reliance on such change to make the concentration determination. Rather, Pardikes and Laguana are based exclusively on the *end-result* of a measured light intensity to determine the concentration of the respective components.

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed, either expressly or inherently (noting that “inherency may not be established by probabilities or possibilities”, *Scaltech Inc. v. Retec/Tetra*, 178 F.3d 1378 (Fed. Cir. 1999)), in a single prior art device, *Akzo N.V. v. U.S. Int’l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the forgoing, it is submitted that neither Pardikes nor Laguana anticipate claims 1, 8 and 19, nor any claim dependent thereon.

Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co.*,

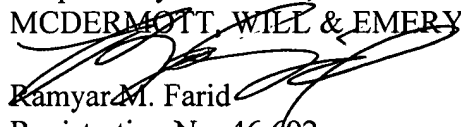
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819F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as claims 1, 8 and 19 are patentable for the reasons set forth above, it is respectfully submitted that all claims dependent thereon are also patentable. In addition, it is respectfully submitted that the dependent claims are patentable based on their own merits by adding novel and non-obvious features to the combination. See, for example, new claims 23-25, which are supported on page 18, line 24 – page 19, line 5 and pages 29-33; page 18, lines 19-23 and page 26, line 20 – page 27, line 9; and page 54, lines 9-21 with Figures 7-8; respectively.

Based on the foregoing, it is submitted that all pending claims are patentable over the cited prior art. Accordingly, it is respectfully requested that the rejections under 35 U.S.C. § 102 be withdrawn.

### CONCLUSION

Having fully and completely responded to the Office Action, Applicants submit that all of the claims are now in condition for allowance, an indication of which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below. To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,  
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